In the High Court of Punjab and Haryana at Chandigarh

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FAO No.5290 of 2005

Date of decision: 10.8.2006

Vakeela ..Appellant

Versus

Tahir Hussain & another ..Respondents

Coram: Hon'ble Mr.Justice Uma Nath Singh
Hon'ble Mr.Justice S.D.Anand

Present: None for the parties.

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Uma Nath Singh,J.(Oral)

It appears from the past proceedings that no one appeared on behalf of the appellant on the date of hearing, i.e., 23.3.2006. Thereafter, the matter was listed on 4.5.2006 and it was adjourned by an order for today. Today also, no one appears on behalf of the appellant.

We have carefully examined the award dated 13.9.2005 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Gurgaon, in MACT Petition No.74 of 21.4.2004, 380 of 6.12.2003, 50 of 9.3.2004 and 171 of 21.4.2004, awarding various amounts to the claimants as it appears that the accident involved one death and injuries to others. This judgment in FAO No.5290 of 2005 arising out of MACT Case No.74 of 21.4.2004 shall also dispose of connected appeals being FAO No.5291 of 2005 passed in MACT case No.380 of 6.12.2003 and FAO No.5292 of 2005 arising out of MACT case No.50 of 9.3.2004.

It appears that on the date of the accident, i.e.,15.12.2003, deceased Jameel was coming on the tractor, without registration Number as the registration had been applied for, to his village from his fields after loading bundles of Jawar crop. He was driving the vehicle at a slow and moderate speed and on the left hand side of the road. His minor daughter Vakeela and another minor boy Shakul were also sitting on the aforesaid tractor. At about 7.30 A.M.,

when he had covered a distance of about 20 yards from the fields, the offending vehicle, being a dumper (HR 55 B 2499) said to be driven rashly and negligently and also at a high speed, appeared from the front and wrong side. As a result, the tractor turned turtle resulting in injuries to Jameel as well as the minor children, namely, Vakeela and Shakul, who sustained multiple injuries. Zameel, driver of the tractor, succumbed to the injuries and, thus, an FIR No.303 of 2003 was registered under sections 279/338/304-A IPC against the driver of the dumper at Police Station Ferozepur Jhirka on the statement of one Shamsudin, said to be the eye witness of the accident. Vakeela filed the claim petition No.74 of 2003, which gives rise to the FAO No.5290 of 2005 under Section 166 of the Motor Vehicles Act,1988, claiming a compensation of Rs.5 lacs with 9 % interest P.A. from the date of the application on the ground that she suffered multiple injuries. She was aged about 17 years at the time of accident and earning Rs. 3000/- P.M. by doing agricultural and household work. She claimed that she suffered fracture on her right thigh and remained admitted in Al Afia Hospital Mandikhera from 15.10.2003 to 20.10.2003 and thereafter, she was shifted to Dhariwal Nursing Home, Palwal, where she remained admitted from 21.10.2003 to 29.10.2003. She also suffered operation of her leg and in the course of treatment, an amount of Rs.50,000/- was spent. In future also, there is likelihood of further expenditure. She also claimed for her future prospects on account of disability, when she will face problem regarding settlement of her marriage. That apart, claimant Vakeela appeared as PW8, stating that she has suffered 40 % disability on account of fracture on her leg. Dr. M.Farukh, Medical Officer, General Hospital, Mandikhera, appeared as PW1. He was one of the members of the Medical Board, who assessed the disability and he reiterated that she had suffered 40 % disability on account of moderate restriction of movement at right hip and right knee joint, along with shortening of the leg about 2". He also proved the original disability certificate (Ex.P-1). That apart, Imran Khan (PW4), Record Keeper of Dhariwal Nursing Home, Palwal, also appeared in the court with original discharge chart and proved that claimant Vakeela remained in the hospital from 21.10.2003 to 29.10.2003.The original admission chart (Ex.P5) and

bill (Ex.P6) for Rs.3640/- have also been proved. Claimant Vakeela also placed on record two other bills in the sum of Rs.1952/- and Rs.2192/-. Thus, all the three bills contained the amount of Rs.7784/-, which in round figure comes to Rs.7800/- Thus, the Tribunal has awarded Rs.1,60,300/-.

We have carefully examined the calculation and find that the amounts awarded under different heads by the Tribunal appear to be reasonable. Besides, all the 11 heads required to be assessed, have been duly taken care of while assessing the compensation amount.

As regards FAO No.5291 of 2005, which arises out of Claim Petition No. 380 of 6.12.2003, Smt. Hassina,(PW7),the widow of the deceased, has stated that the deceased was about 36 years of age at the time of his death and besides her, his widowed mother and minor children were depending upon him . Her deceased husband was having 7/8 killas of land and used to earn Rs.6000/- by doing agricultural work and further Rs.3000/- by sale of milk. However, as there was no documentary evidence to substantiate the claim of PW7 regarding the earning of her deceased husband, his income was assessed as Rs.2700/- per month. After deducting 1/3rd amount towards pesonal expenses, the dependency was determined as Rs.1800/- per month, i.e,21,600/- P.A. The Tribunal has applied the multiplier of 16, and, thus, assessed the total dependency amount at Rs.3,45,600/-. Besides, the widow was also granted Rs.5000/- towards consortium and another Rs.5000/- towards funeral expenses, Thus, the grand total has come to Rs.3,55,600/-. It appears that the Tribunal has, rather, taken a considerate view in awarding the compensation amount. In the absence of documentary evidence to substantiate the income of the deceased. If his income was assessed as a Labourer, he was not supposed to give the documentary proof of income. The Tribunal has assessed his monthly income as Rs.2700/-. Moreover, the interest has awarded in all the matters at 7-1/2% P.A. As the deceased is stated to be owning 7/8 killas of land besides the tractor being involved in the accident, it cannot be said that he would not be spending 1/3rd towards his personal expenses. Therefore, on that account also, there is no scope to interfere with the awards. The deduction of 1/3rd amount

appears to be justified, the Tribunal has taken care of all the necessary heads required to have been addressed in assessing the compensation amount. Accordingly, we do not find any ground for further enhancement of the compensation.

The third appeal FAO No.5292 of 2005 arises out of Claim Petition No.50 of 2004. Ali Mohd.(PW5) father of Sehkul, a minor, appeared in the witness box and stated that at the time of accident, his minor son was at about 14 years of age. He suffered fracture and was taken to Mandikhera Hospital for treatment. He was also treated by a Desi Hakim. According to this witness, the victim had suffered shortening of leg and in total an amount of Rs.30000/- was spent on his treatment. However, the claimant could not produce any medical bill. Notwithstanding non production of bill, the disability certificate in respect of the victim was proved by Dr.M.Farukh, Medical Officer,General Hospital, Mandikhera who appeared as PW1. According to him, the disability had been assessed to be 25 % on account of mild restriction of movement of left knee and left hip alongwith shortening of leg by 2 “. He also proved the disability certificate (Ex.P2). Accordingly, the Tribunal awarded Rs.63,000/- towards partial disability to the extent of 25 %, including loss of future prospects , Rs.3000/.- towards medical expenses and Rs.5000/- towards special diet. Thus, in total a sum of Rs.96000/- has been awarded. The Tribunal has taken a just and reasonable view in assessment of the compensation. We do not find any infirmity in the award in respect of assessment of compensation as in this case also, all the 11 relevant heads have been duly addressed.

Thus, in view of the aforesaid discussion, we do not find any merit in all the three FAOs, and the same are dismissed.

(UMA NATH SINGH)
JUDGE

August 10,2006
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(S.D.ANAND)
JUDGE